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may be anticipated, which will do much to prolong the war.

The above quotations from the Tribune amply explain why Caesar's battlefields and those of the present struggle so often coincide. I may remark in conclusion that one of the most illuminating periods of work to me was the time I spent—several weeks—in careful study of the geography of Italy, in connection with a course on Roman Life. Here of special service was the volume on Italy in Stanford's elaborate work on European geography. One part of Müller's Handbuch, Dritter Band, Dritte Abteilung, is J. Jung's Grundriss der Geographie von Italien und dem Orbis Romanus<sup>2</sup> (Munich, 1897). Of value bibliographically is Lübker, Reallexikon des Klassischen Altertums<sup>3</sup> (Leipzig, 1914). Reference may be made also to A. Philippson, Das Mittelmeergebiet: Seine Geographische und Kulturelle Eigenart (Leipzig, 1904). The book deals with a wide variety of topics relating to the geology of the Mediterranean Basin (Chapters I–VI), Die Pflanzenwelt (Chapter VII), Die Landtiere (Chapter VIII), and Der Mensch (Chapter IX); it is illustrated by "9 Figuren im Text, 13 Ansichten, und 10 Karten auf 15 Tafeln". A book still of value, though antiquated now, is a Course in Ancient Geography, by H. I. Schmidt (D. Appleton and Co., 1877). One of the fortunate things in my preparatory school career was the fact that I was obliged to memorize large portions of this book. C. K.

## THE PROSECUTION OF SEXTUS ROSCIUS

### A Case of Parricide, with a Plea of Alibi and Non-motive

[Concluded from page 93]

The judiciary bill passed by Sulla in the year 81 had restored to the senators alone the right to serve on juries. Cicero compliments the personnel of the jury sitting on the case of Roscius, by telling them that they were chosen senators because of their good qualities, and that they were selected as *iudices* because of their strictness<sup>52</sup>. Cicero elsewhere alludes to the change in the composition of juries effected by Sulla<sup>53</sup>. The senators available for jury duty were divided into decuries, and a decury was assigned to a definite case. The number of jurors was then reduced by peremptory challenge to that appropriate to the case.

When the trial began, an opening speech was delivered by Erucius. In this he gave an outline of what he intended to prove by means of witnesses. He dwelt at length on the assumed motive of Roscius for committing the crime, and in general built up a case based almost wholly on circumstantial evidence. To this speech Cicero made reply in the oration we have. This is the one good opportunity the defense has, as we shall see later, to make a strong plea, and Cicero bends every effort to this part of the case.

After the attorneys had finished their initial statements, the taking of evidence for the prosecution began. The prosecutor, by means of questions, led the witness to tell his story, and then handed the witness over to the attorney for the defense for cross-examination. The prosecution could enforce the attendance of witnesses upon the trial, and could force them to testify. But no witness appeared for the defense, unless they chose voluntarily so to do. This is the most unjust part of a Roman criminal case. It places the defense at a frightful disadvantage. In the important case of Milo, Cicero does not mention, in the whole course of his lengthy speech, that a single witness for the defense was present or would give evidence, nor does Asconius do so in his Commentary on the speech, although he gives a long list of the witnesses for the prosecution. An exception appears in the speech for Archias. There Lucullus and representatives from Heraclea personally came to testify in behalf of the defendant. In the speech for Roscius Cicero does not hint that he will be able to call witnesses in favor of his client.

When the taking of evidence was completed, there were further speeches by the prosecution and the defense, devoted to an examination of the evidence. These speeches were, naturally, more technical than those delivered at the opening of the case, and for this reason would be of less general interest to the majority of readers. Here we have the explanation of the fact that very few of these second speeches of Cicero are preserved<sup>54</sup>.

The attorney for the defense had a good opportunity to weaken the case for the prosecution in his cross-examination of witnesses, and in his final statement to the jury. He might show that the witnesses were so prejudiced that their evidence was untrustworthy<sup>55</sup>. For example, Cicero says that T. Roscius Capito is likely to give evidence against Sex. Roscius<sup>56</sup>, and asserts that he will so question Capito as to make it obvious that the past life of Capito was criminal and the evidence he was about to offer was perjured<sup>57</sup>. He might show that the evidence was secured through bribery<sup>58</sup>. But he could bring forward no witnesses to give a positive proof that his statements in court were true. Cicero asserts that Roscius did not kill his father with his own hand, for he was in Ameria at the time his father was killed in Rome<sup>59</sup>. He endeavors to establish an alibi. Common justice would seem to grant the defense the right to produce some citizen, or citizens, of Ameria, who had seen the son at Ameria on that day, in order to prove the fact. Or, still better, the defendant himself would be allowed to take the stand in his own behalf. But the Roman law prohibited a man from giving evidence in his own

<sup>52</sup>8: qui ex civitate in senatum propter dignitatem, ex senatu in hoc consilium delecti estis propter severitatem.

<sup>53</sup>In Verrem I. 13. 37 inter decem annos, posteaquam iudicia ad senatum translata sunt. Compare Tacitus, Ann. II. 22.

<sup>54</sup>They are Pro Fonteio, Pro Flacco, and Pro Scauro. The Fifth Verrine purports to examine evidence already presented, but it is not in point, as the speech was not actually spoken.

<sup>55</sup>103. <sup>56</sup>102; 84.

<sup>57</sup>101. Compare Digest 22.5.2–3.

<sup>58</sup>30. <sup>59</sup>18.

case<sup>60</sup>. The present situation, however, was a striking instance of one condition on which the slaves of Roscius might be questioned under torture. The present oration is the *locus classicus* on the matter. Slaves might be questioned concerning the killing of their master. If the slaves of Roscius the father were put to the torture, the fact might be elicited, either during direct questioning or on cross-examination, that the son was in Ameria at the time the father was murdered in Rome, and thus establish the alibi of the son. But a technicality here again met the defense, and prevented Cicero from using the slaves as witnesses. For the slaves, along with the rest of the property, had been sold and were now in the possession of Chrysogonus. And, of course, Chrysogonus refused to allow them to appear<sup>61</sup>.

Since the defense lay under such obvious disadvantage in regard to evidence, it is clear that the conviction or acquittal of the defendant must have depended almost entirely upon the skill of the attorney in his preliminary statement. Roman members of the bar recognized this situation, and, when several were retained for the defense, the most effective and experienced speaker was selected to give the lengthy plea in answer to the initial representation of the prosecutor.

We have only one genuine prosecutor's preliminary speech extant, namely, the first oration of Cicero against Verres. For sufficient reasons Cicero makes a much briefer speech in that case than was the custom. Consequently, it cannot be regarded as typical. It does not tell, for example, just what points the prosecution intends to prove. But it has one great characteristic which was probably typical of all such speeches. It mentions only in the most general way the nature of the evidence to be offered. It does not name individuals who are to give their evidence. Evidently the speech of Erucius against Roscius had the same characteristic, for Cicero is not sure just who the witnesses against Roscius will be. He had heard that Capito was likely to take the stand<sup>62</sup> and he had heard of other witnesses, and that they were secured by means of bribery<sup>63</sup>. But he is not sure that Erucius had even mentioned all the matter he has in mind to bring forward in evidence<sup>64</sup>.

But Erucius had made clear his main line of evidence. He treated at some length the question of motive.

involved in the killing of Roscius, and intended to prove that the son had a strong motive for committing the crime. That question concerns us here, not so much on account of the law on the topic, as on account of its value in indicating the nature of the pleadings permitted in a Roman court<sup>65</sup>. Erucius had stated that the elder Roscius intended to disinherit his son<sup>66</sup>. No reason is assigned for this, except that the father had no affection for the son, and even seemed to dislike him. This was evident from two circumstances. First, the father had the habit of taking his younger son with him wherever he went, but he kept the elder son on the farm<sup>67</sup>. Second, the son never went to banquets with the father<sup>68</sup>. Whatever may have been the cause of the estrangement, and the prosecution does not know the cause, it was certain that the son was not in favor of his father. The son, being indignant at the treatment he was receiving, planned revenge, and killed his father, or had him killed.

This is the charge which Cicero is called upon to answer, and his own answer must be conclusive, for, since he cannot call witnesses to his support, he must depend wholly upon his answer to the charge in order to secure the acquittal of his client. He does this in three ways.

First, he enters a general and emphatic denial of the accusation. Of course this is easy, and that is what is done merely by entering a plea of not guilty. It has been said that a Roman barrister could make such assertions for the defense as he chose, because he was not forced to prove them. But those who make this statement forget that he was likely to have his assertions disproved by the prosecution, and, if part of his plea fell in this way, the jurors would be likely to grant little credence to the rest. He was, therefore, compelled in his own interest to stick closely to the truth.

Secondly, he endeavors to show the inadequacy of the evidence presented by the prosecution. He shows that all the evidence is circumstantial, and "in circumstantial evidence every link in the chain must be perfect". No witness could be produced who had seen the defendant commit the crime<sup>69</sup>. Nor could the prosecution prove that he had secured others to commit the deed. Much of the evidence was untrustworthy, because it was prejudiced or bribed. Then he dwells with great earnestness and apparent sincerity upon the enormity of the crime of parricide, and contends that the evidence must be irresistibly strong to warrant conviction. Many motives must be made to appear, a most profligate life on the part of the accused must be proved, extreme frenzy and madness must be present, and evident traces of the crime must exist<sup>70</sup>. Unless the crime is proved in a manner almost visible, it is not credible<sup>71</sup>. The accused must have hated

<sup>60</sup>102: Itaque more maiorum comparatum est, ut in minimis rebus homines amplissimi testimonium de sua re non dicerent. Compare Digest 22.5.10 Nullus idoneus testis in re sua intellegitur.

<sup>61</sup>77-78: quod in tali crimine, quod innocentibus saluti solet esse, ut servos in quaestionem polliceantur, id Sex. Roscio facere non licet. Vos, qui hunc accusatis, omnis eius servos habetis. . . . Li servi ubi sunt? Chrysogonum, iudices, sectantur. . . . Dubitate etiam nunc, iudices, si potestis, a quo sit Sex. Roscius occisus, ab eone, qui propter illius mortem in egestate et insidiis versatur, cuine quaerendi quidem de morte patris potestas permittitur, an ab iis, qui quaestionem fugitant, bona possident, in caede atque ex caede vivunt. . . . Mortis paternae de servis paternis quaestionem habere filio non licet. Ne tam diu quidem dominus erit in suos, dum ex iis de patris morte quaeratur?

<sup>62</sup>84: De Capitone post viderimus, si, quem ad modum paratum esse audio, testis prodierit.

<sup>63</sup>30.

<sup>64</sup>82.

<sup>65</sup>The recent sensational trial of Madame Caillaux in Paris offers an interesting and instructive parallel.

<sup>66</sup>52.

<sup>67</sup>42.

<sup>68</sup>52.

<sup>69</sup>74: Quo modo occidit? ipse percussit an aliis occidendum dedit? Si ipsum arguis, Romae non fuit; si per alios fecisse dicis, quaero, servosne an liberos?

<sup>70</sup>62.

<sup>71</sup>68.

his father, and feared punishment by the father<sup>72</sup>. None of these things was proved.

Thirdly, he shows where a motive for the crime really rested. Reverting to the ancient doctrine of Cassius, *cui bono*, he gives much attention to proving that Sex. Roscius would not profit by the crime, but that another would. This whole plea, which constitutes the most interesting feature of the speech, would be ruled out of an American or English court, on the ground that it is not strictly a defense of the defendant, but is an arraignment of one who is not on trial. Roman procedure allowed it, and it must be admitted that it offered a considerable offset to the disadvantage under which the defense suffered, of not being able to bring forward witnesses. Cicero seems to prove conclusively that Sex. Roscius had no motive for committing the crime, but that every motive pointed directly to Chrysogonus, Magnus, and Capito. The attack upon these three is very vigorous and fearless.

It is well known that Roscius was acquitted. Cicero claims, or boasts, that the case of the prosecution is so weak that they were in danger of being prosecuted for *calumnia* under the terms of the Lex Remmia<sup>73</sup>. By this law one who engaged in a prosecution which was 'prompted by malice and conducted by fraud' had the letter K branded on his forehead.

We do not know by what majority of votes Roscius was acquitted, but it was a victory that won fame for Cicero. Plutarch says that Cicero incurred the ill-will of Sulla to such a degree that he found it advisable to leave Rome and travel in Greece for his health. The statement of Cicero is famous, that it has become a settled opinion in Rome, and among foreign nations, that in the courts of Rome at that time no wealthy man, however guilty, could be convicted<sup>74</sup>. But this relates only to a wealthy man, who was able to bribe the jury. The situation of the poor man, like Roscius, who had no influence, was extremely hazardous and it reflects the very greatest credit upon Cicero that he was able to gain his case against the formidable influence of those who were virtually his accusers.

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## REVIEWS

Hellenistic Athens<sup>1</sup>. By William Scott Ferguson. New York: The Macmillan Company (1911). Pp. 487. \$4.00.

Mr. Ferguson is the first scholar who has made any attempt to gather into connected shape the story of Athens from the death of Alexander the Great to the end of the Pre-Christian era. The history of Athens during these three centuries is not that of a state with a constructive polity, or of any political

influence, but rather an account of the transformation of a small city-state into a municipality of a larger empire. This feature is perhaps less important and less vital than the fact that throughout these years Athens was the great University town of the Mediterranean district, and that her ancient political influence was transfused into an intellectual power which was even more far-reaching and permanent than the other.

The first three chapters deal with the years between the death of Alexander in 323 and the fall of Lachares in 294 B.C. There is abundant literary and epigraphical evidence for this period, which has been employed by earlier historians and writers of special topics. Whatever new material Mr. Ferguson has added has been gleaned from a careful study of the inscriptions, and the political changes at the close of the third century have been set forth with more exactness than hitherto. The end of the Hellenic or Lamian War marked the beginning of instability in the Athenian constitution. During the next seventy-five years oligarchy, tyranny, and democracy of all sorts followed in bewildering succession. It is especially difficult to follow the democracy which, like a weather-cock, veered to every point of the compass according as Macedon, Epirus, the Ptolemies, or the Seleucids bought or won the support of Athens.

While the political life of the city was in such a state of flux, the moral life of the people was in far worse case—but unfortunately not liable to changes for the better. There is this curious difference between the ancient and modern world—the uplift of women in ancient days came from that class which modern society is now trying to lift up. Much of our information about the society of that time is gathered from the comedians of the day, whom we should not take too seriously, realizing that the comic stage then as now was not a necessary portrayal of prevalent social conditions.

Mr. Ferguson relies largely on the results of his own researches in the epigraphical documents in constructing the history of the third century. To him we owe the law of the secretary-cycle by which order has given place to chaos in dating the inscriptions. But there are possibilities of disturbances in the cycle at all times; whether in the confusion of party strife during the first half of the century, he has made allowance for all of these remains to be seen. Ferguson and Kirchner assume no breaks in the cycle between 302 and 262 B.C. Kolbe, Pomtow and Tarn have attacked this arrangement, assuming several disturbances but without being able to explain them satisfactorily, and their objections therefore have not received general support. We may never attain final accuracy because of the conflicting nature of the evidence, but, when it is so difficult to reconcile our limited literary tradition with the evidence of inscriptions as dated by Mr. Ferguson, we must ponder long before we can accept or discard either. There must be some solution which lies between the rigidity of the present cycle and the

<sup>72</sup>68.

<sup>73</sup>55:57.

<sup>74</sup>In Verrem I.1.1.

<sup>1</sup>Since this book was written, so much investigation has been carried on in various portions of the period which Mr. Ferguson discusses, that a reviewer has an unfair advantage in offering his criticism. I therefore content myself at this late day with a summary of the book, indicating one or two only of the major problems which are still open to controversy.